

Attorney's Docket No. 045600/274146

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Carozzi et al. Confirmation No.: 6391
Appl. No.: 10/783,417
Filed: February 19, 2004
For: AXMI-006, A DELTA-ENDOTOXIN GENE AND METHODS FOR ITS USE

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Petition To Grant Filing Date And To Refund Petition Fee

As set forth in MPEP §506.02, Applicant hereby petitions to grant the proper filing date of February 19, 2004 rather than February 20, 2004 for the above-identified patent application. The following is enclosed as evidence of February 19, 2004 being the correct filing date under 37 CFR § 1.10:

1. A copy of the Cover Sheet for the Application showing the Express Mail Number;
2. A copy of the Express Mail Receipt marked by the United States Post Office as being mailed on February 19, 2004; and
3. A copy of our return post card from the United States Patent Office showing that Applicant was improperly given the filing date of February 20, 2004 instead of February 19, 2004.

There is no error on the part of Applicant. Accordingly, Applicant respectfully requests the granting of February 19, 2004 as the filing date.

A check in the amount of \$130.00 in payment of the petition fee as set forth in 37 CFR §1.17(i) is enclosed herewith. Any additional fee may be charged or any overpayment credited

06/08/2004 RMEBRAHT 00000019 10783417

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In re: Carozzi et al.
Appl. No.: 10/783,417
Filing Date: February 19, 2004
Page 2

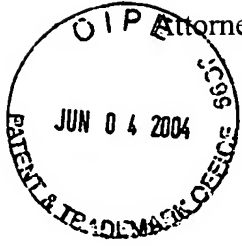
to our Deposit Account No. 16-0605. Because no defect existed, however, Applicant also respectfully requests refund of the petition fee.

Respectfully submitted,

Karen M Morse

Karen M. Morse
Registration No. 54,324

CUSTOMER NO. 00826 ALSTON & BIRD LLP Bank of America Plaza 101 South Tryon Street, Suite 4000 Charlotte, NC 28280-4000 Tel Raleigh Office (919) 862-2200 Fax Raleigh Office (919) 862-2260	CERTIFICATE OF MAILING I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on June 1, 2004 <i>Nora C Martinez</i> Nora C. Martinez
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Attorney's Docket No. 045600/274146

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Carozzi et al. Confirmation No.: 6391
Appl. No.: 10/783,417 Group Art Unit: 1638
Filed: February 19, 2004
For: AXMI-006, A DELTA ENDOTOXIN GENE AND METHODS FOR ITS USE

Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR CORRECTED FILING RECEIPT

Sir:

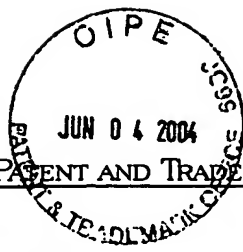
In reviewing the Filing Receipt for the above-referenced application, Applicant notes that errors appear as noted on the enclosed copy of the Filing Receipt. Applicant requests that a corrected Filing Receipt be issued. A Petition to Grant Filing Date and To Refund Petition Fee of \$130, along with appropriate supporting data, is being filed concurrently herewith.

Respectfully submitted,

Karen M. Morse

Karen M. Morse
Registration No. 54,324

Customer No. 00826 ALSTON & BIRD LLP Bank of America Plaza 101 South Tryon Street, Suite 4000 Charlotte, NC 28280-4000 Tel Raleigh Office (919) 862-2200 Fax Raleigh Office (919) 862-2260	CERTIFICATE OF MAILING I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Box Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on June 1, 2004 <i>Nora C. Martinez</i> Nora C. Martinez
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**COPY**

KMM

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/783,417	02/20/2004 2/19/04	1638	455	045600/274146	3	23	4

00826

ALSTON & BIRD LLP
 BANK OF AMERICA PLAZA
 101 SOUTH TRYON STREET, SUITE 4000
 CHARLOTTE, NC 28280-4000

Alston & Bird

CONFIRMATION NO. 6391

FILING RECEIPT



OC00000012239427

Received By

Date Mailed: 04/01/2004

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Filing Receipt Corrections, facsimile number 703-746-9195. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

Nadine Carozzi, Raleigh, NC;
 Tracy Hargiss, Cary, NC;
 Michael G. Koziel, Raleigh, NC;
 Nicholas B. Duck, Apex, NC;
 Brian Carr, Raleigh, NC;

Assignment For Published Patent Application

Athenix Corporation, Durham, NC;

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/448,806 02/20/2003

Foreign Applications

If Required, Foreign Filing License Granted: 03/31/2004

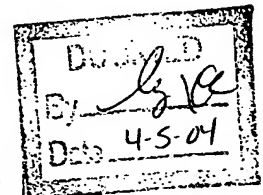
Projected Publication Date: To Be Determined - pending completion of Missing Parts

Non-Publication Request: No

Early Publication Request: No

** SMALL ENTITY **

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Title

AXMI-006, a delta-endotoxin gene and methods for its use

Preliminary Class

435

**LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15**

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Office of Export Administration, Department of Commerce (15 CFR 370.10 (j)); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

UTILITY PATENT APPLICATION TRANSMITTAL <small>(Only for new nonprovisional applications under 37 CFR 1.53(b))</small>	Attorney Docket No. 045600/274146
	First Inventor Nadine Carozzi
	Title AXMI-006, A DELTA-ENDOTOXIN GENE AND METHODS FOR ITS USE
	Express Mail Label No. EV 387067094 US

ADDRESS TO: MAIL STOP PATENT APPLICATION
COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

COPY

Transmitted herewith for filing in the United States Patent Office is a patent application for:

Inventors: Nadine Carozzi; Tracy Hargiss; Michael G. Koziel; Nicholas B. Duck; Brian Carr

Assignee of this invention is Athenix Corporation

1. ☒ The Filing Fee has been calculated as shown below:
2. ☒ Applicant claims Small Entity Status. See 37 CFR 1.27.

		Small Entity		Large Entity	
No. Filed	No. Extra	Rate	Fee 1	Rate	Fee 0
BASIC FEE			\$ 385		\$ 0
TOTAL CLAIMS:	23 - 20 = 3		X 9 = \$ 27		x 18 = \$ 0
INDEP CLAIMS:	4 - 3 = 1		X 43 = \$ 43		x 86 = \$ 0
[<input type="checkbox"/>] MULTIPLE DEPENDENT CLAIMS PRESENTED			+145 = \$ 0		+290 = \$
*If the difference in Column 1 is less than zero, enter "0" in Column 2.		TOTAL	\$ 455	TOTAL	\$

The Commissioner is hereby authorized to credit overpayments or charge the following fees to Deposit Acct. No.

- a. ☒ Fees required under 37 CFR 1.16 (National filing fees).
- b. ☒ Fees required under 37 CFR 1.17 (National application processing fees) including any extension of time fees under 37 CFR § 1.136(a) that are required for consideration of papers filed during prosecution.

☒ A check in the amount of \$ 455.00 for the filing fee is enclosed.

☐ The above filing fee will be paid along with Applicant(s) Response to the Notice to File Missing Parts.

3. ☒ Specification; Total Pages 47
4. ☒ 3 Sheets of Drawing(s) (35 USC 113)

5. ☐ Declaration and Power of Attorney; [Total Pages ___]
 a. ☐ Newly executed (original or copy)
 b. ☐ Copy from a prior application (37 CFR 1.63(d))
 (for continuation/divisional with Box 18 completed)
 i. ☐ DELETION OF INVENTOR(S) Signed statement attached deleting inventor(s)
 named in the prior application, see 37 CFR 1.63(d)(2) & 1.33(b).
6. ☒ Application Data Sheet. See 37 CFR 1.76
7. ☐ CD-ROM or CD-R in duplicate, large table or Computer Program (Appendix)
8. Nucleotide and/or Amino Acid Sequence Submission (if applicable, all necessary)
 a. ☒ Computer Readable Copy (CRF)
 b. ☐ Request for Transfer of Computer Readable Form of Sequence Listing
 under 37 CFR § 1.821(e) and MPEP 2422.05 (must be compliant with new rules)
 c. ☒ Specification Sequence Listing on:
 i. ☐ CD-ROM or CD-R (2 copies); or
 ii. ☒ Paper (32 Pages)
 d. ☒ Statements verifying identity of above copies

ACCOMPANYING APPLICATION PARTS

9. ☐ Assignment Papers (cover sheet & document(s) (including a check for the \$40.00 fee)
10. ☐ 37 CFR 3.73(b) Statement (when there is an assignee); ☐ Power of Attorney
11. ☐ English Translation Document (if applicable)
12. ☐ Information Disclosure Statement (IDS)/PTO-1449; ___ Copies of IDS Citations
13. ☐ Preliminary Amendment
14. ☒ Return Receipt Postcard (MPEP 503) (Should be specifically itemized)
15. ☐ Certified Copy of Priority Document(s) (if foreign priority is claimed)
☐ Foreign Priority is claimed as Application No. , filed
16. ☐ Nonpublication Request under 35 U.S.C. 122(b)(2)(B)(i).
 Applicant must attach form PTO/SB35 or its equivalent.
17. ☐ Request for Early Publication Under 37 CFR § 1.219. Fee of \$300.00 is enclosed.
18. If a CONTINUING APPLICATION, check appropriate box and supply the requisite information below
 and in a preliminary amendment, or in an Application Data Sheet under 37 CFR 1.76:
☐ Continuation ☐ Divisional ☐ Continuation in Part (CIP)
 of prior Application No: ___; Filed

Prior Application Information: Examiner

Group/Art Unit:

For CONTINUATION or DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

Signature:

Karen M. Morse

Agent of Record: Karen M. Morse

Agent Registration No. 54,324

Alston & Bird LLP

Bank of America Plaza

101 South Tryon Street, Suite 4000

Charlotte, NC 28280-4000

Tel Raleigh Office (919) 862-2200

Fax Raleigh Office (919) 862-2260

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Date of Deposit February 19, 2004

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Marilyn Muñoz
Marilyn Muñoz

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Atty. Dkt. No. 045600/274146

Kindly acknowledge receipt of the accompanying **UTILITY PATENT APPLICATION** with Application Transmittal Cover Sheet for: Inventor(s): Carozzi *et al.*

Title of Invention: AXMI-006, A DELTA-ENDOTOXIN GENE AND METHODS FOR ITS USE

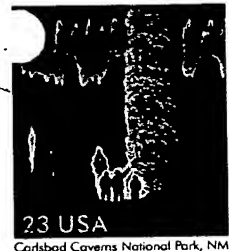
Pages of Spec. (including claims and abstract) 47; No. of Claims 23

No. of Drawing Sheets 3; Other Documents: Statement in Support of Filing a Sequence Listing (1 pg.); Sequence Listing (32 pgs.); Computer Readable File (1 diskette); Application Data Sheet (5 pgs.)

Check(s) Enclosed

\$455.00. Please place office stamp hereon and Return Postcard to : Marilyn Muñoz/KMM, **ALSTON & BIRD LLP**

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